1951

R. M. Birdzell v. Utah Oil Refining Company : Brief of Appellant

Utah Supreme Court

Shields & Shields; Attorneys for Plaintiff and Appellant;

7749

In the Supreme Court
of the State of Utah

R. M. BIRDZELL,
Plaintiff,

vs.

UTAH OIL REFINING COMPANY,
a Corporation,
Defendant.

Case No. 92127

BRIEF OF APPELLANT

SHIELDS & SHIELDS,
Attorneys for Plaintiff and Appellant

POINTS INVOLVED

POINT # 1

Did the Court rule correctly that the letter
brief was insufficient to constitute a memoran
out of the Statute of Frauds.

marked Appendix "B" in the trial
which would take an oral agreement

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STATEMENT OF THE CASE

The Appellant brought this Action against the Respondent, his Summons having been filed on the 5th day of February, 1951. In August, 1936, the Respondent, Utah Oil Company, made a lease to Mr. R. M. Birdzell, Appellant, all of the Respondent's Service Station property designated as Service Station No. 511 in Wendover, Utah, this lease being in reality a sub-lease of said property inasmuch as the property in question

is owned by the Western Pacific Railroad Company. For the furtherance of their own company, the Respondents seek out and make leases for the use of certain property belonging to the Western Pacific Railroad Company for the purpose of establishing outlets for their products on that land. Due to the business organization of said Respondent, it has become customary for that company to further provide leases to individuals, which leases grant said individuals the right to operate Service Stations for the distribution of Respondent's products.

In August, 1936, the Respondent leased to Mr. Birdzell, the Appellant, the property and holdings in Wendover, Utah designated as Station No. 511, upon a yearly basis, such leases being perpetuated by an option of renewal to the Appellant written into each lease. This arrangement continued with each yearly lease being renewed until the end of 1947. At this time, Respondent made known to the Appellant that the original lease which they had from the Railroad Company had expired in that year. That lease was to expire at the end of 1947. Shortly prior to the end of 1947, Appellant became anxious as to his further business prospects and made several requests to the Respondent for a lease to be consummated. After numerous discussions, personal and by telephone, it was decided by the Appellant and the respondent that should the Respondent Oil Company be successful in obtaining a renewal of their lease with the Railroad Company, that they would make a sub-lease of the unexpired term to Appellant. After such oral agreement had been arrived at, a letter was written by Mr. A. G. Olofson, representing Utah Oil Company to Mr. R. M. Birdzell, Appellant, setting forth the terms of that

agreement. This letter clearly sets forth the terms of the agreement which had been arrived at orally. It definitely established the property interest in question by indicating that the lease would be in the same terms as previous leases held between Respondent and Appellant. The letter was signed by A. G. Olofson, an authorized agent of the Respondent Oil Company, the party sought to be charged in this action. This letter appears in the trial brief as Appendix "B" (enclosure) of Appellant's papers.

After receipt of said letter, Appellant continued in possession of said premises until the date of January 10, 1949, at which time Respondent terminated Appellant's lease.

This action is sought by Appellant to recover damages suffered by Appellant as a result of Respondent's breach of the above mentioned agreement to make a lease with Appellant for the remainder of the ten (10) year period of Respondent's lease with the Railroad Company.

The case was brought to trial before a trial judge as was stated above in February, 1951. After the filing of the preliminary papers which appear in the trial brief submitted by the Clerk's office, the motion for a Summary Judgment was made by the Respondent on the grounds that the oral agreement between the parties above mentioned to make a lease was within Section 33-5-3 of Utah Code, Annotated and that such letter, as is marked Appendix "B" in the trial brief was not sufficient memorandum to make such oral agreement comply with the Statutes of Frauds. Upon consideration of Respondent's motion, the Court granted a Summary Judgment for the

Respondent and against the Appellant for the cause above stated. It is this point of law upon which Appellant relies in this appeal.

POINTS INVOLVED

Did the Court rule correctly that the letter marked Appendix "B" in the trial brief was insufficient to constitute a memorandum which would take an oral agreement to make a lease out of the Statute of Frauds. We have concluded that the trial court erred in this ruling because:

ARGUMENTS

In accordance with our position in this matter, we first draw the Court's attention to Section 33-5-3 of the Utah Code Annotated which reads as follows:

> "Every contract with a lease for a longer period than one year or for the sale of any lands or any interest in lands shall be void unless the contract, or some note or memorandum is in writing subscribed by the party to whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing."

In explanation of the Statute indicating a note or memorandum will be sufficient if signed by the party to be charged, several cases may be cited:

Dennison v. Hildt, 70 P. 2d 56, speaking generally says:

> "The Statute of Frauds is not a law relating to the formality of the execution of contracts, but merely requiring a memorandum as evidence of the contract."

In reliance on this case, we feel that certainly there is an indication of the oral agreement set forth in the letter in question. Further in this clarification we quote from Holsz v. Stephen, 200 NE 601:

> "A memorandum in writing is sufficient to meet the requirements of the Statute of Frauds that certain contracts shall be evidenced by writing, if it contains the names of the parties, the terms and conditions of the contract and a description of the property sufficient to render it capacable of identification."

Certainly here there would be no question but that this letter was signed by the party to be charged or the lawful agent thereto, but it is further urged that the letter written by Respondent to Appellant sufficiently set forth the terms of the oral agreement, it being seen that all the conditions for affecting the lease were set down in said letter. The letter also meets the requirements of a description of the property or property interest, the property interest in this case being the lease for a term of ten years. The letter marked Appendix "B" would leave no doubt but that this was the lease referred to in said letter. If it be argued that the lease itself was not the property interest to be described, but that in reality it was the real property itself, then certainly the description of the property, being that of "our station No. 511 at Wendover, Utah" would satisfy as description of the property in question.

Reading Axe v. Botts, 37 A 2d 572:

"The provision of the Statute of Frauds that contracts to create an interest in real estate shall be unenforceable unless they be in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, is satisfied if the parties to be charged or the properly authorized agents have executed a writing embodying the terms of the agreement."

American Law Reports Annotated further bears out this view in Volume 80, P 1475:

"It is settled not only by the tacit assumption of numerous cases discussed throughout this annotation, but also by the cases which have expressly passed upon the question, that the contract or the memorandum thereof, required by the Statute to be in writing, need not be a formal writing in the form of a regular contract, and that the agreement to employ or to pay commissions, or the authorization to sell or purchase, may be embodied in or deduced from correspondence, letters, or telegrams exchanged between parties."

A Utah case which falls directly on point with the view stated by the A. L. R. is Fritsch v. Hess, 49 Ut. 75:

"From an examination of the evidence in the case, we find that the dealings between the plaintiff and the defendant with reference to the employment of the defendant as agent and with reference to the particular sale claimed to have been made by the plaintiff for the defendant were by correspondence, either by letters transmitted by mail, or by messages transmitted by telegraph. Throughout the dealings the plaintiff was at Salt Lake City, in the State of Utah, and the defendant was in the State of California. We find that, so far as the contract of employment between the plaintiff

and defendant is concerned, these letters and telegrams are sufficient to constitute 'some note or memorandum thereof in writing subscribed by the party to be charged therewith.' It is well settled that no particular form of words is necessary to comply with this statute, and that almost any kind of writing will be sufficient if it be signed by the party sought to be charged and contains the essential terms of a contract."

In conclusion, may it be stated that the only point for consideration here is whether or not the letter in question, marked Appendix "B" in the trial brief is a sufficient memorandum to comply with the Statute of Frauds. This follows from the decree of the trial court. Said court received the motion for a Summary Judgment on the issue of said letter's insufficiency and rendered its judgment in compliance with that motion. We have attempted here to cite authority which would substantiate our contention that this letter was in fact a sufficient memorandum and such authority would indicate that the trial court erred in rendering its Summary Judgment on the basis of its insufficiency as a memorandum to comply with the Statute of Frauds.

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